

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY**

**Call to Order:** By **CHAIRMAN AL BISHOP**, on January 17, 2001 at 3 P.M., in Room 317-A Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Al Bishop, Chairman (R)  
Sen. Duane Grimes, Vice Chairman (R)  
Sen. Chris Christiaens (D)  
Sen. Bob DePratu (R)  
Sen. Eve Franklin (D)  
Sen. Don Hargrove (R)  
Sen. Dan Harrington (D)  
Sen. Royal Johnson (R)  
Sen. Jerry O'Neil (R)  
Sen. Emily Stonington (D)

**Members Excused:** Sen. Fred Thomas (R)

**Members Absent:** None.

**Staff Present:** Jeanne Forrester, Committee Secretary  
Susan Fox, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 116, 1/11/2001; SB 107,  
1/11/2001  
Executive Action:

#### **HEARING ON SB 116**

**Sponsor:** SEN. EMILY STONINGTON, SD 15, Bozeman

**Proponents:** Chuck Hunter, Department of Public Health and Family Services (DPHHS)

**Ann Gilroy, Court Assessment**  
**Ann Lynch, Montana Childcare Association**  
**Barbara Mahugh, Montana R & R Network**  
**REP. JEFF MANGAN, HD 45, GREAT FALLS**  
**John W. Larson, District Court**

**Opponents:** None

**Opening Statement by Sponsor:**

**SEN. EMILY STONINGTON, SD 15, Bozeman** introduced SB 116. The bill was requested by the Child Protective Services Division (CPS) and deals with a variety of topics that deal with child welfare. It will revise the laws relating to child abuse and neglect, youth in need of care, adoption and foster children; revising provisions relating to placement and disposition of abused and neglected youth. It affects Title 41, which is child abuse and neglect and Title 42, which is adoption in Montana statute. These are very difficult, emotional and traumatic circumstances that these statutes deal with. Our public agencies are stretched very thin and we have been asking these agencies to do more with less, and we cannot continue to do that. In section 2, we are removing child care providers from the list of persons responsible for the child's care. This bill is saying CPS will no longer go into commercial daycare centers and investigate child abuse. This responsibility will be transferred to the licensing bureau of daycare centers and if that is inadequate, law enforcement will take over. Next, it will deal with the distinction between the courts' authority; and the department's authority in these cases, by preventing the court ordering the treatment of the child. Presently, the court can order treatment and it is up to the department to pay, even if they do not have the money in their budget. The next part deals with adoption by saying the department will make the decision about the child's adoption; not the court. Finally, the fourth part is coming in the form of an amendment, stating, when child abuse is reported the department shall assess the information contained in the report and make a determination regarding the level of response required and the time frame with which action must be initiated. Presently, CPS is required by law to investigate every report. These are some tough changes to make.

***{Tape : 1; Side : A; Approx. Time Counter : 0.9 - 6.7}***

**Proponents' Testimony:**

**Chuck Hunter, DPHHS, Child Protective Services Division**, passed out a section by section synopsis of SB 166 **EXHIBIT**(phs13a01).

**{Tape : 1; Side : A; Approx. Time Counter : 6.7 - 27.3}**

**{Tape : 1; Side : B; Approx. Time Counter : 0.0 - 5.4}**

**Mr. Hunter** said there is a clause in Section 19, lines 10-13, when licensing foster families, they are required to do a Child Protective Services check and a criminal background check. The Department of Justice now is questioning the wording and they have sent some suggested language over and he will look at that language when the committee does executive action.

Next, **Mr. Hunter** passed out an amendment to SB 166, **EXHIBIT (phs13a02)**.

Mr. Hunter has the number of investigations, number of workers, etc., and other data available for the committees questions.

**Rep. Jeff Mangan, HD 45, Member of the Youth Justice Council of Crime Control, Member Childcare Advisory Board**, said this is a good bill, but he has two concerns. The first is removing child care providers from the list of folks responsible for a child's care; but he is also concerned about licensing taking on the additional responsibility. Secondly, he feels they should not take away the discretion from the courts and judges. Other than that this looks like a good bill.

**John W. Larson, District Judge in Missoula**, is concerned about taking the court out of the process. SB 170 deals with the same topic and both committees - Senate Judiciary and Senate Public Health should work together. There are many legal issues and public health issues that need to be blended from both bills. Judge Larson passed out Resource Guidelines, Improving Court Practice in Child Abuse and & Neglect Cases **EXHIBIT (phs13a03)**. These guidelines were adopted in 1995. The reason judges got into this business is because Congress passed a law 20 years ago, PL 96-272, to speed up the system to get kids out of foster care. He finds it ironic the department wants the judges to deal with long term foster care and make decisions about placement, but doesn't trust the judges to take any role whatsoever in the final placement of these kids. Federal law requires reasonable efforts, but nowhere in Montana Law are reasonable efforts defined. He passed out some recommended approaches to reasonable efforts **EXHIBIT (phs13a04)**. This would be helpful to social workers, family members, and professionals to know what these reasonable efforts are. The requirements of the federal money (4E) are based on reasonable efforts. We need some flexibility to improve these programs and we need to work together.

**{Tape : 1; Side : B; Approx. Time Counter : 5.4 - 26.9}**

**Judge Larson** said there are a few technical changes with reference to medical records. The drug treatment regulations require disclosure of treatment records. He also said, we need to work on Mr. Hunter's concern about resources. In the past few sessions, the Legislature has expanded district court reimbursement programs. In summary, we need to focus on child protection, and we should attempt to address reasonable efforts.

**Judge Larson said** we need to focus on permanency for children **EXHIBIT (phs13a05)**, and we have to take the right approach for these kids, and let the Judiciary, who are also elected, and the responsible elected officials who are here; help make decisions and not delegate all the decisions to the bureaucrats who are here in Helena. Finally, **Judge Larson** felt it would be nice to have a computer system that would help all agencies see what is going on, by being able to share information with the various agencies.

**Ann Gilkey, Court Assessment Program**, has been an advocate for CPS for 13 years. She is in support of SB 166 with a few concerns. Her first concern is having CPS social workers not looking into child abuse allegations. She feels the licensing workers are not trained to investigate. Another area she is concerned about are the records and confidentiality of those records. She feels these records need to be protected and worries about giving them to more people. Finally, she is not sure about the changing of hearsay evidence, (currently it is allowed) and it would not be allowed under the changes and she feels that would be too limiting. Please take careful consideration of this bill.

**Margie Mason, Montana Child Care Resources**, approves of what CPS currently does, but she doesn't feel the licensing staff should become the investigators of child abuse and neglect. The licensing staff is far sparser and these people already have a vast area to cover. The trained staff is another issue, these people were hired for a specific area, not to do investigation for child abuse and neglect, which is a very sensitive area. Many times we look back over reports, and they help us track all incidents, and she feels there will not be a good reporting system.

**Ann Lynch, President of Montana Childcare Association**, said she would like to address the issue of children in child care and she feels that CPS should continue to investigate reports of child abuse and neglect. She said there is a big difference between licensing and checking out regulations; and in investigating child abuse.

**Robert McLean, Lame Deer**, passed out a handout **EXHIBIT (phs13a06)**, a poster of his missing grandchildren. He is in support of the bill, but he does have concerns. He is glad the bill has included the language of the noncustodial parent. However, the language should state it **must** include the noncustodial parent; and not state it may include the noncustodial parent. He disagrees with the removal of the judiciary branch and thinks it should be amended to increase the role of the judge. He also, felt this department does not adequately address the Indian Child Welfare Act. **Judge Barz, Billings**, ordered his grandchildren to be returned to their father from their mother, but this was not followed up on. The mother never returned the children and now she has taken these children out of the state. He said that is why we need to have judges involved so you can go back to the judges to get a new placement order. He said he realized the court makes the decision, based upon the evidence. **Mr. McLean** maintained we need to address these issues, so someone like himself has somewhere he can turn.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. CHRISTIAENS** wondered if the licensing staff have adequate resources and time to do what they are asked to do. **Mr. Hunter** said the licensing staff is quite a bit smaller than his staff, and very clearly they don't have the resources to respond immediately. Therefore, his staff would probably be the first responder to any reports of abuse, but would not do an in depth investigation.

**SEN. CHRISTIAENS** said when he went through the bill looking specifically for the provisions of the Indian Welfare Act, it does not follow through in this bill. **Mr. Hunter** said it is incorporated in all of his department's policy manuals.

**SEN. CHRISTIAENS** asked about 4E money. **Mr. Hunter** said 4E money is federal money provided to support child in foster care and the activities that support those children.

The committee agreed they did not have time to get all the answers to the questions they wanted to ask. They would like to have Mr. Hunter, Ms. Gilkey and Judge Larson present when they take executive action.

***{Tape : 2; Side : A; Approx. Time Counter : 0.7 - 26.4}***

**Closing by Sponsor:**

**SEN. STONINGTON** closed by saying these are difficult policy decision lines that have to be made. She doesn't want to get confused with what the statutes already say; and what we are trying to do. She said **Judge Larson** was implying this bill is trying to take the courts out of the process and this is not true.

**HEARING ON SB 107**

**Sponsor:** SEN. EVE FRANKLIN, SD 21, Great Falls

**Proponents:** Leslie Garvin, Mental Disabilities Board of Visitors  
Donald Harr, Montana Psychiatric Association  
Bob Ross, Billings Mental Health Center  
Jani McCall, Deaconess Billings Clinic  
SEN. MIGNON WATERMAN, SD 26, Helena  
Jane Jelinski, Montana Association of Counties  
Charlie McCarthy, Mental Health Association  
Brian Cameron, League of Women Voters  
Erin McGowan, Montana Sheriff's and Peace Officers Association  
Bonnie Adee, Mental Health Ombudsman  
Sandra Mihelish, National Association of Mental Illness of Montana  
Bob Olsen, Montana Hospital Association  
Sherry Meador, Court Assessment Program  
SEN. BOB KEENAN, SD 38, Bigfork

**Opponents:** None

**Opening Statement by Sponsor:**

**SEN. EVE FRANKLIN, SD 21, Great Falls** introduced SB 107, which would allow teleconferencing mental health proceedings, and was requested by the Legislative Finance Committee. This bill would allow two-way conferencing at the discretion of the court. It would work with those individuals who are in crisis and are brought to jail after some kind of altercation. Next, they are hauled to Warm Springs, then they are taken back to the community of origin to undergo court proceedings. This causes distress on the individuals and also costs the counties a considerable amount of money. She also said since this would become a new law, we are still struggling to improve the language.

**SEN. FRANKLIN** passed out a revised fiscal note **EXHIBIT (phs13a07)**. Since this is a new law, it is hard to determine what the actual fiscal costs will be.

**Proponents' Testimony:**

**Leslie Garvin, Mental Disabilities Board of Visitors**, passed out a written statement of her testimony **EXHIBIT (phs13a08)**.

**Donald Harr, Montana Psychiatric Association**, said he liked the concept of this bill. In the section where it states the patient and the judge can see each other, he would like to add that the patient's attorney can also be seen. He is very concerned about the welfare of the patient and wants to do whatever is best for him. He is also aware it may be difficult for some communities to be able to afford the equipment and hopes that communities will work together to share their equipment.

**Charlie McCarthy, Executive Director, Mental Health Association**, rose in support of this bill.

**Brian Cameron, League of Women Voters**, viewed this bill in principle as a good thing, and he urged the committee to support this bill.

**Jani McCall, Deaconess Billings Clinic**, is in support of this bill. The Sheriff's Department in Yellowstone County has incurred the following costs for transporting one patient with two deputies to Warm Springs: driving \$360.00; flying - \$600.00 to \$975.00: this does not include any overtime. There would be cost effectiveness by going to a system like this. They urged support of this bill.

*{Tape : 2; Side : B; Approx. Time Counter : 0.0 - 23.2}*

**Erin McGowan, Montana Sheriff's and Peace Officers Association**, said they stand in support of this bill.

**Bonnie Adee, Mental Health Ombudsman**, agreed this technology is already in use and it works. They are in support of this bill.

**Sandra Mihelish, National Association of Mental Illness-MT**, passed out a copy of her written testimony **EXHIBIT (phs13a09)**.

**Bob Olsen, Montana Hospital Association**, said 42 medical facilities already have this in place and they are in support of this bill.

**SEN. MIGNON WATERMAN, SD 26, Helena** served on the Mental Health Oversight Committee and they strongly support this bill.

**Jane Jelinski, Montana Association of Counties**, we supported this bill. She wanted to point out one thing, when these people are being transported - they are in handcuffs. These people are ill, they are not criminals.

**Sherry Meador, Court Assessment Program**, is in support of the telecommunications bill. Her office has been working with Senator Burns' office, which will seek a federal appropriation of \$1.2 million in the next session for telecommunications units in the courts.

**Bob Ross, Billings Mental Health Center**, said they serve 13 counties and this legislation is long overdue.

**SEN. BOB KEENAN, SD 38, Bigfork**, served on the Mental Health Oversight Committee and would help the committee any way he can.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. O'NEIL** asked who will pay the costs of having an attorney present and would it hurt this bill if an attorney could appear by video conference rather than traveling to Warm Springs. **SEN. FRANKLIN** thought this would not hurt the bill. **Ms. Fox** said the intent of the wording of this bill was that the patient has the right to counsel, and the right to communicate privately with their counsel, either in person or by telecommunication.

**SEN. STONINGTON** asked the sponsor what was her thinking about solving the dilemma of the patient who objects to having their case heard by telecommunication. **SEN. FRANKLIN** said she has not had the time to solve that dilemma and they were working on that.

**Closing by Sponsor:**

**SEN. FRANKLIN** said this is a new area and nothing prohibits this from being done. She will bring this bill to executive action with some concrete amendments.

**{Tape : 3; Side : B; Approx. Time Counter : 10.3}**



**ADJOURNMENT**

Adjournment: 5 P.M.

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SEN. AL BISHOP, Chairman

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JEANNE FORRESTER, Secretary

AB/JF

**EXHIBIT** (phs13aad)